

FILED
DISTRICT COURT OF GUAM

JUN 14 2006

**MARY L.M. MORAN
CLERK OF COURT**

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Attorney for Plaintiff
ELIZABETH TOLOSA-TAHAN

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

ELIZABETH TOLOSA-TAHAN) CIVIL CASE NO. 06-00002

Plaintiff,) MOTION TO AMEND THE
) PLEADINGS TO NAME PARTY
) PLAINTIFF, ELIZABETH TOLOSA-
) TAHA IN HER CAPACITY AS
 E NILOOBAN, NILO) REPRESENTATIVE OF THE
 N, et. al.,) ESTATE OF EDGAR G.M. TOLOSA
) PURSUANT TO RULE 7.1(A);
) CERTIFICATE OF SERVICE

Defendants.

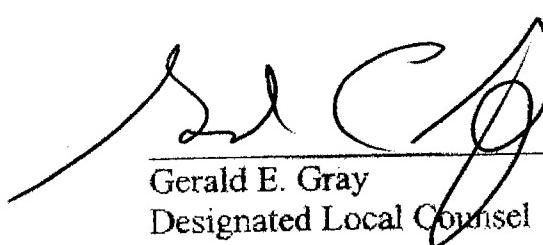
COMES NOW, Plaintiff, ELIZABETH TOLOSA-TAHA, and pursuant to Title 28, Judiciary and Judicial Procedure, Section 1332 (a) (1) and (2) Federal Rules of Civil Procedure, Rule, Local Rule, 7.1 and CCP Section 377.60, moves this Court for an order to amend the pleadings to include party plaintiff Elizabeth Tolosa-Taha in her capacity as representative of the estate of Edgar G.M. Tolosa.

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5 In support of this Motion, plaintiff relies on her brief filed simultaneously
6 herewith.

7 Dated this 29th day of May 2006.
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Respectfully submitted,


Edna V. Wenning
California State Bar No. 130377
Admitted Pro Hac Vice


Gerald E. Gray
Designated Local Counsel

1
INTRODUCTION/BACKGROUND

2 On or about January, 2006, plaintiff filed her Complaint to Quiet Title in this
3 Court. Counsel for defendants Mila and Nilo Nilooban filed their answer on April 6,
4 2006.

5 Edgar G.M. Tolosa died intestate on November 1, 1999 in San Francisco,
6 California. Plaintiff Elizabeth Tolosa-Taha is the adopted daughter and sole heir of
7 decedent Edgar Tolosa. Defendants Milarose and Bienvenido Nilooban, tenants of the
8 property known as 247 J.L. Blaz, Dededo, Guam 86912, owned in fee simple by
9 decedent Edgar Tolosa. Defendants Milarose and Nilo Nilooban continued to pay their
10 monthly rental of \$279.19 per month to the Bank of Hawaii, pursuant to agreement with
11 decedent, until May 9, 2002 after the Bank of Hawaii declared that mortgage loan
12 number 014447-9 secured by the subject property, had been paid in full. Since May 9,
13 2002 defendants have not paid their rents and have taken advantage of the absence of
14 decedent's heir in the District of Guam. Based on information and belief, defendants
15 Nilooban are citizens of the Republic of the Philippines and a resident of Guam, U.S.
16 territory while plaintiff Elizabeth Taha is a resident of the State of California. Diversity
17 jurisdiction is present and the amount in controversy exceeds \$75,000.00. Comparable
18 property values in the area range from \$79,900 to 103,000 and above.
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20 Plaintiff will file a request for judicial notice of the pleadings in the case entitled
21 *Elizabeth Taha, individually and as representative of the Estate of Edgar Tolosa, Case*
22 *No. 832816-8*, a wrongful death action filed in 2000 against the City of Oakland, County
23 of Alameda, et. al. Said lawsuit identified plaintiff Elizabeth Taha as the sole surviving
24 daughter of decedent, Edgar Tolosa, and decedent's sole heir and representative of his
25 estate. Settlement of the wrongful death action brought by plaintiff as sole heir and
26 representative of deceased Edgar Tolosa was completed in November 2001. The case
27 was dismissed after settlement on January 30, 2002. Not one defendant in the wrongful
28

1 death action questioned plaintiff's standing to file a wrongful death claim as the sole heir
2 and representative of the estate of Edgar Tolosa.

MEMORANDUM OF POINTS AND AUTHORITIES

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THE STATE OF CALIFORNIA WRONGFUL DEATH STATUTE GAVE
STANDING TO PLAINTIFF ELIZABETH TOLOSA-TAHA AS SOLE
HEIR AND REPRESENTATIVE OF THE ESTATE OF EDGAR TOLOSA

Code of Civil Procedure, Section 377.60 provides:

"A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession."

The Court in *Jose Chavez vs. Carpenter*, (2001) 91 Cal.App. 4th 1433, the Court declared:

"Standing in wrongful death actions is now governed by Code of Civil Procedure Section 377.60.^[2] As relevant here, that statute permits a cause of action for wrongful death to be asserted by:

"(a) The decedent's surviving spouse, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse, who would be entitled to the property of the decedent by intestate succession. . . ."

1 It is undisputed that plaintiff Elizabeth Tolosa-Taha was adopted by decedent as
2 evidenced by the certificate of adoption and amended birth certificate. During the
3 pendency of the wrongful death action in California, no one questioned plaintiff's status
4 as the sole heir and representative of the estate of Edgar G. M. Tolosa.

5 The first subdivision of the wrongful death statute gives standing to those persons
6 "who would be entitled to the property of the decedent by intestate succession," but only
7 "if there is no surviving issue of the decedent." Code Civ. Pro., Section 377.90 (a).

8 There is no question that plaintiff is the sole surviving issue of decedent and a
9 representative of his estate, hence she has standing to file the complaint to quiet title.
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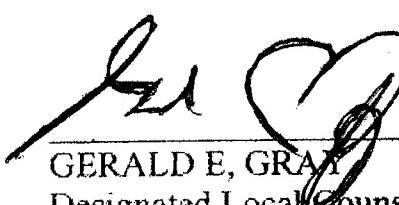
11 May 29, 2006

Respectfully submitted

12 5/29/06
13 Dated


EDNA V. WENNING
Attorney for Plaintiff
Elizabeth Tolosa-Taha

14 5/30/06
15 Dated


GERALD E. GRAY
Designated Local Counsel
Attorney for Plaintiff
Elizabeth Tolosa-Taha

CERTIFICATE OF SERVICE

I hereby certify that on May , 2006 I have served a copy of the following document:

1. Motion to Amend the Pleadings to Name Party Plaintiff Elizaveth Tolosa-Taha in her Capacity as Representative of the Estate of G.M. Tolosa; Certificate of Service addressed to counsel of record, by either delivering, faxing and/or mailing a copy of same to the following:

Louie J. Yanza
Maher.Yanza.Flynn.Timblin, LLP
Governor Joseph Flores Building
Hagatna, Guam 96910

This day of May , 2006



Edna V. Wenning
California State Bar No. 130377
Attorney for Plaintiff

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Monrovia, California 91016
(626) 359-3219